there is not much authority on the subject. An early case is that of *Malcolm v. Charlesworth*[1] which decided that the assignment of a legacy charged on land was not within the scope of the Yorkshire Act then in force. Lord Langdale did not give his reasons at length but seemed to base his decision on the practice of the past.

> As to the other point, the only question is whether the land situate in the county of York is to be considered as affected by an assignment of a legacy charged upon the land. It appears to me that the deed under which the plaintiff claims is not a deed which affects the land; it is an assignment of the money charged upon the land, and the money only; and if I were to hold that an instrument assigning money charged upon land situate in a register county required registration, I should lay down a rule which certainly has not hitherto been adopted.

If, as is undoubtedly the case, an instrument creating an equitable charge required registration, it would seem that the assignment of such a charge also required registration. This case is difficult to follow but in *Arden v. Arden*[2], Kay J. (as he then was) said that he did not disagree. In *Gresham Life Assurance Society v. Crowther*[3], Cozens-Hardy, L.J. says "It may be said that that was a bold decision, and I am disposed to think that it is not quite clear that the concurrence of the plaintiff (who represented an assignee) might not have been required to make a title". The case of *Arden v. Arden* dealt with an interest subject to a binding trust for sale. This was considered by the Judge not to be an interest in land. The line of reasoning that seems to have prevailed was based on the consideration that for the purposes of notice under *Dearle v. Hall*[4] interests that would be overridden by a binding trust for sale were treated as personalty, whereas anything else by way of an interest in land was excluded from the rule. This has the effect of making registration under the Middlesex and Yorkshire Acts and notice to trustees mutually exclusive. This is convenient but not logical from the historical point of view. *Dearle v. Hall* is much later than the Yorkshire and Middlesex Acts and so is the conveyancing device of the trust for sale. The same reasoning did not prevail in the case of the Mortmain and Charitable Uses Acts, *Attorney-General v. Lord Weymouth*[5]. The notional conversion brought about by the trust for sale was only intended to benefit the next of kin as opposed to the heir at law. There is no reason why the conversion should have affected the interests of others, e.g. those who had charges on the interests of beneficiaries.

In the *Gresham* case the Court seems to have been influenced by the consideration that the trusts were kept off the title and dealings with these trusts did not affect the purchaser of the estate of the trustees for sale. This presupposes that registration was introduced merely for the benefit of those dealing with the beneficial enjoyment, not with those who had charges and subsidiary interests; this is not at all the case. However, since the *Gresham* case the law, where there is a trust for sale, can be taken to be settled. If the *ratio decidendi* of Kay, J. is correct, then the test is whether the rule in *Dearle v. Hall* applies. If it does not, then it is an interest in land within the meaning of the various Acts. See *Wilmot v. Pike*[6].

In the present case there is no trust for sale and the trusts are on the title. The matter is complicated by the division into shares but I do not think that the duties of the trustees prevent the interest of Tan Lian Chye from being an interest in land. If he had taken everything subject to the charge of $100, I do not think that the matter would have appeared doubtful. The division into ten shares does not make any difference. I do not think that anything less than a trust for sale can bring the matter outside the scope of the Ordinance.

The answer must be that the deed in question can be registered.

Order Accordingly.

LOKE WAN THO v. LACHIE McDONALD AND OTHERS.

[Orig. Civil Juris. (Murray-Aynsley C. J.)
November 16, 1949]

[Singapore — Suit No. 178 of 1949]

Rules of the Supreme Court, Order XI Rule 1 — Service out of jurisdiction — Concurrent writs in England and Singapore — Application to stay proceedings in Singapore.

In this case the Plaintiff claimed damages for an alleged libel contained in an article in the Daily Mail. On 7th September 1948 the Plaintiff caused a writ to be issued in London claiming damages against the 2nd and 3rd defendants, the publishers and the editor of the Daily Mail respectively. Subsequently, the Plaintiff took out a summons to add the 1st defendant as a defendant but no further proceedings have been taken on the London suit. On 18th March 1949 the Plaintiff caused a writ claiming damages for the said libel from the first defendant to be issued in Singapore and this was served on the first defendant. On 24th June 1949 the Plaintiff applied in the Singapore Suit to add the 2nd and 3rd defendants as co-defendants, and further applied for service of the writ out of jurisdiction. An order to that effect was made. The 2nd and 3rd defendants applied by Summons in Chambers for an order to discharge the order authorising service out of jurisdiction on the ground that the discretion given by Order XI rule 1 (f) was wrongly exercised. The defendants also applied by Motion for an order that all further proceedings in the action be stayed.

Held, (1) that the plaintiff in this case is a resident in and belongs to Singapore and as the statements complained of relates to events in Singapore or Malaya, the

Court was justified in allowing service of the writ out of jurisdiction; (2) that the issues of fact in this case could only be tried efficiently in Singapore or Malaya and that this was another ground for allowing service of the writ out of jurisdiction; (3) that a stay of proceedings will only be ordered in special circumstances and as there were no special circumstances in this case, the plaintiff should be permitted to continue the proceedings on his undertaking to discontinue the London proceedings.

Cases referred to :—

(1) *Kroch v. Rossell etc.* (1937) 1 A.E.R. 725.
(2) *Monro v. American Cyanide etc. Co.* (1944) 1 K.B. 433.
(3) *The Hagen* (1908) P. 189.
(4) *In re Norton's Settlement* (1908) 1 Ch. 471.
(5) *Egbert v. Short* (1907) 2 Ch. 205.
(6) *Logan v. Bank of Scotland* (1906) 1 K.B. 141.
(7) *Ewing v. Orr Ewing* 9 A.C. 34.
(8) *The Christiansborg* (1885) P.D. 141.
(9) *The Goloa* (1926) P. 103.
(10) *The Cattarina Chiazzare* (1876) 1 P. 368.
(11) *The Peshawur* (1883) 8 P. 32.
(12) *The London* (1931) P. 14.
(13) *McHenry v. Lewis* (1882) 22 Ch. D. 401.
(14) *Cox v. Mitchell* (1854) 7 C.B. N.S. 55.
(15) *The Male Ivo* (1864) 2 A. & E. 356.
(16) *Walsh v. Bishop of Lincoln* (1874) 4 A. & E. 242.
(17) *Wedderburn v. Wedderburn* (1839) 4 Mylne & Craig 584.
(18) *Ortell v. Lepage* (1851) 5 De Gex & Smale 95.
(19) *Foster v. Vassall* (1747) 3 Atk. 587.

SUMMONS IN CHAMBERS Adjourned Into Open Court And MOTION.

Sir Roland Braddell for the Applicants (Defendants).

E. D. Shearn and *K. A. Seth* for the Respondent (Plaintiff).

Murray-Aynsley, C. J. : — In these proceedings I have to deal with a summons and a motion. They are as follows :—

Summons in Chambers No. 440/49 dated 4th August, 1949.

An application on the part of the abovenamed 2nd and 3rd Defendants for an Order to discharge the Order of this Honourable Court made on the 1st July, 1949, authorising the service upon them of the concurrent writ herein on the ground that the discretion given by Order 11 rule 1 (f) was wrongly exercised.

Motion dated 24th August, 1949.

Sir Roland St. John Braddell of Counsel for the abovenamed 1st, 2nd and 3rd Defendants moves this Honourable Court for an Order that all further proceedings in this action be stayed upon the grounds appearing in the affidavit of the 1st Defendant sworn this day.

The facts are as follows. The London newspaper "The Daily Mail" on August 16th, 1948, published by the 2nd defendants and of which the 3rd defendant is editor, published an article written by the first defendant. On September 7th the plaintiff caused a writ to be issued in London claiming damages against the 2nd and 3rd defendants for a libel alleged to be contained in that article. No statement of claim was delivered and nothing further has been done except the taking out of a summons to add the first defendant here as a defendant. That summons has been adjourned generally and no order has been made. On the 18th of March, 1949, a writ claiming damages for the said libel from the first defendant was issued in Singapore and served on the first defendant in person within the jurisdiction on March 19th. On June 24th a summons was taken out by the plaintiff in the Singapore action to add as co-defendants the 2nd and 3rd defendants. This was supported by an affidavit of the plaintiff. Application was made in the same summons for service out of the jurisdiction on these defendants. An order to this effect was made on July 1st. Conditional appearance was entered on August 2nd. The summons that I have set out deals with this order for service out of the jurisdiction. The plaintiff contends that service out of the jurisdiction is authorised in the present case by (f) and (h) of Order XI rule 1. On the face of it the present case is clearly within (h), as it cannot be denied that, apart from questions of service, 2nd and 3rd defendants are proper parties. So it is not necessary to go into the debatable question of whether there is or is not a tort committed within the jurisdiction. In my opinion this is not a matter of importance. The matter alleged is clearly a tort both here and in England.

The 2nd and 3rd defendants contend that, though this is a case in which the Court can authorize service outside the jurisdiction, this is not a case in which it should be done. They allege that the affidavit of the plaintiff previously referred to did not contain an adequate disclosure of the material facts. They also complain of delay and of double procedure. As regards the last of these, I shall deal with it when I deal with the motion.

As regards the first ground, the affidavit, I do not consider that its defects are sufficiently serious to cause me to reverse the previous order.

The same may be said of delay; if in the meantime the London proceedings had been actively pursued, it might well have been otherwise. A more substantial ground, in my opinion, is the fact that the libel, if there be one, was published in a London newspaper which does not circulate in the ordinary sense of the term in Singapore. Only casual copies sent by private persons of the issue in question arrived in Singapore. In the ordinary course I would not make an order for service out of the jurisdiction in such a case, even if there had been a technical publication in Singapore, or the plaintiff could otherwise bring the matter with the scope of Order XI rule 1.

Kroch v. Rossell etc.[1] is a valuable guide to procedure in cases of this character. It was a case under the English Order XI r. 1 (ee) which corresponds to our (f). I think that the same consideration would apply in cases under the English (f) which corresponds to our (h). I do not think, however, that the case helps the defendants. The Judges gave different reasons for not allowing service out of the jurisdiction. Slesser, L.J. based his judgment on the ground that the plaintiff did not have what might be called an English reputation; Scott, L.J. on the ground that the issue could be more conveniently tried elsewhere. In the present case the position is reversed in respect of both these grounds. The plaintiff is resident in and belongs to Singapore and the statement complained of relates to events in Singapore and Malaya.

A third ground has been raised against service out of the jurisdiction in various cases, including *Kroch v. Rossell.* There Scott, L.J. raised the question of international comity. He also said a great deal on the matter in *Monro v. American Cyanide etc. Co.*[2]. See also in *The Hagen*[3]. I do not think that that consideration should apply as between Courts in the Empire. If the facts can be more efficiently investigated within one jurisdiction I do not think that Courts in other jurisdictions should take umbrage.

In the present case, as regards service out of the jurisdiction, I consider that as the correspondence foreshadows a plea of justification and/or fair comment, and, as I have said, the events out of which such a plea could arise took place in Malaya or Singapore, the issues of fact could only be tried efficiently in either Singapore or Malaya. I think that a trial in London would impose hardship and injustice on the plaintiff.

These considerations, I think, dispose of the question of service out of the jurisdiction. I shall now consider the motion. This, as regards 2nd and 3rd defendants, raises the question of double procedure. In the case of first defendant there is actually no double procedure. The jurisdiction invoked applies to all vexatious proceedings. Double procedure is one instance. As regards first defendant, I should stay the proceedings if I thought that a Cou here could not as efficiently try the issues as a Court elsewhere. The cases where stays have been granted are cases where a plaintiff has gone out of his way to select a jurisdiction that is inappropriate and in order to cause as much trouble as possible. Typical instance are *In re Norton's Settlement*[4], *Egbert v. Short*[5], *Logan v. Bank of Scotland*[6]. They are all extreme cases. Where a person is properly served within the jurisdiction for a matter over which the Court has jurisdiction, a stay should only be granted on very strong grounds. See *Ewing v. Orr Ewing*[7]. The case of first defendant taken by itself does not present such grounds.

As regards the 2nd and 3rd defendants, these proceedings are *prima facie* vexatious. Once it is established that the proceedings are *prima facie* vexatious the Court has discretion to adopt one of three courses: (1) to stay the proceedings before it; (2) to prevent, by means of an injunction, the plaintiff from proceeding elsewhere; (3) to permit the plaintiff to elect.

In the present case the defendants contend that the proceedings should be stayed. They cited cases where a stay was ordered and relied chiefly on *The Christiansborg*[8]. That, of course, was an admiralty case. It is not, on the face of it, a very strong authority because the Court of Appeal was divided. An examination of the judgments shows that the majority in the Court of Appeal were mainly influenced by the consideration that a ship had been arrested and bailed and then arrested again by the parties who were responsible for the prior arrest. It was treated by the majority in the Court of Appeal as being a breach of faith. *The Goloa*[9] was for practical purposes the same case as regards facts. There are two earlier cases in which a stay was ordered. *The Catterina Chiazzare*[10] was a case where the facts were similar to the previous two. *The Peshawur*[11] was a case where the other side, not the plaintiffs, had taken proceedings in Ceylon. According to later cases this was not a ground for a stay. This was not

followed in *The London*[12]. On the question as to the proper procedure in cases of double procedure the most valuable authority is *McHenry v. Lewis*[13]. The question was reviewed with great care and the decision has not since been queried. The majority of the Judges in *The Christiansborg* professed to apply it. It clearly establishes that the normal procedure is to put the plaintiff to election. Jessel, M.R. spoke of "the practice of the old Court of Chancery, which always put a plaintiff to his election by an order of course if he was suing for the same cause of action both at law and in equity".

Historically the matter is interesting. The Courts of Common Law disclaimed any jurisdiction in the matter (see *Cox v. Mitchell*[14]). The Admiralty did exercise such jurisdiction (*The Male Ivo*[15] and cases there cited) as did the ecclesiastical Courts (*Walsh v. Bishop of Lincoln*[16]). The Courts of Equity did exercise such jurisdiction (*Wedderburn v. Wedderburn*[17], also *Ortell v. Lepage*[18]) but only after considerable hesitation. See *Foster v. Vassall*[19]. The Courts of Equity seem to have followed by analogy in suitable cases the procedure adopted in cases where proceedings had been taken in two Courts within the jurisdiction. Now all Courts will follow the procedure of Court of Equity.

The expression "forum conveniens" is not a term of art in English law. There is no English doctrine which restricts the suitor in the choice of jurisdiction. The general rule still is where a Court has jurisdiction it cannot refuse to exercise it; *Ewing v. Orr Ewing* (*supra*).

In *The Christiansborg,* Baggalley, L.J. clearly treated election as the normal course and the bailing of the ship abroad as a special reason why that course should not be followed in that particular case. Fry, L.J. reasoned on similar lines.

The conclusion from the cases is that a stay will only be ordered in special circumstances such as, in my opinion, do not exist in the present case. The manner in which I think that I should exercise my discretion both on the summons and on the motion is in permitting the continuance of these proceedings on the undertaking by the plaintiff to discontinue the London proceedings.

Order Accordingly.

VINCENT LEE v. REX.

[App. Crim. Juris. (Murray-Aynsley C. J.)
November 30, 1949]

[Singapore — Magistrate's Appeal No. 123 of 1949]

Penal Code Ss. 44, 383 and 384 — Extortion — Meaning of injury.

In this case the appellant, a volunteer special constable, was charged and convicted under S. 384 of the Penal Code. It was alleged that the appellant had, to extract money, threatened various persons who were smoking chandu with arrest.

Held, that a threat to exercise the legal powers of a person against another does not constitute putting that other person in fear of "injury" within the meaning of S. 44 of the Penal Code and therefore the appellant in this case should not have been convicted of extortion.

MAGISTRATE'S APPEAL.

C. H. Koh for the Appellant.

A. H. Simpson for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant was charged and convicted under section 384 of the Penal Code. It appears that the appellant was what is known as a volunteer special constable and was duly vested with all the powers and privileges of a "Police Officer". It also appears that in spite of this he had never performed any duties as such. It is also alleged that armed with these powers he had to extract money, threatened various persons who were smoking chandu with arrest.

The offence of extortion is defined in section 383 of the Penal Code. It will be seen that an essential part of the offence is putting a person in fear of "injury". In turn "injury" is defined in section 44 of the same code. There "injury" is harm illegally caused. It appears to me to follow from this that the exercise of legal powers however done can never constitute harm.

It is to be regretted that the use of the word "extortion" in this connection, which is very different from the technical use in English law and also from the popular use, has led to confusion. It will be seen that the authorities cited in the commentary both in Gour and Ratanlal are mostly English cases and they are examples of offences very different from that defined in the section. If the appellant is guilty of an offence, it is not that of which he has been convicted.

The appeal must be allowed and the conviction and the consequential order must be quashed.

Appeal Allowed.